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the Plaintiff on his claims of racial discrimination, retaliation, and Section 1983 violations. Plaintiff's allegations that he was treated very differently from another employee, James Kemper, who allegedly exhibited similar conduct and threats as those alleged against the Plaintiff, could allow the Plaintiff to prevail on his claims. See McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 282-85 (1976) (even if an African-American plaintiff committed serious violations of company rules, if Caucasian employees also violated such rules and were treated differently for comparable violations, then Title VII is violated). Moreover, Plaintiff has presented proof that could allow a trier of fact to conclude that Defendant Metro's school maintenance division had a custom, policy, or practice that tolerated racial harassment and discrimination by white employees against black employees. See Monistere v. City of Memphis, 115 Fed. Appx. 845, 850-51 (6th Cir. 2004).

Upon review of the Defendant's Responses to Plaintiff's Statement of Additional Material Facts (Docket Entry No. 61), the Court concludes material factual disputes exist on several key factual contentions. Id. at ¶¶ 7-15, 18-26. The Court cannot decide issues of credibility on a motion for summary judgment. Liberty Lobby, 477 U.S. at 255; Hanover Ins. Co. v. American Engineering Co., 33 F.3d 727, 732 n.8 (6th Cir. 1994).

Accordingly, the Defendant's motion for summary judgment (Docket Entry No. 40) is **DENIED**. Plaintiff's claims against Defendant McLaughlin and Defendant Kemper were previously dismissed with prejudice, and therefore their motions for summary judgment (Docket Entry Nos. 31 & 43) are **DENIED as moot**.

It is so **ORDERED**.

**ENTERED** this the 13<sup>th</sup> day of August, 2010.

  
WILLIAM J. HAYNES, JR.  
United States District Judge